



June 21, 2001

Ms. Ann-Marie P. Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2001-2657

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148630.

The Travis County Sheriff's Office ( "TCSO") received a request for records relating to fifteen Internal Affairs cases. You claim that the requested records contain information that is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We first note that a completed investigation made of, for, or by a governmental body is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure . . . *unless they are expressly confidential under other law*:

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<sup>1</sup> Some of the records that you submitted for our review are illegible. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. By submitting illegible documents, you made it impossible for this office to review that portion of the information. You thus failed to request a decision in the manner prescribed by section 552.301. In the future, failure to comply completely with section 552.301 will result in a decision that the requested information is public and must be released in its entirety. See Gov't Code §§ 552.006, .301(e), .302.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). Our review of the submitted information reflects that twelve of the investigations have been completed. TCSO must release the requested information in the completed investigations, unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code.

You assert that the submitted records contain criminal history record information ("CHRI") that is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the CHRI that TCSO must withhold under federal law and chapter 411 of the Government Code.

You also claim that the submitted records contain compilations of criminal history that are confidential under section 552.101 in conjunction with common law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked those portions of the submitted information that must be withheld under section 552.101 and *Reporters Committee*.

You also have marked certain witnesses' names and statements that you claim are excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. Common law privacy protects private facts about an individual. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In Open Records Decision No. 611 at 1-2 (1992), this office determined that information regarding violence between family members is not excepted from disclosure as a matter of law under section 552.101 in conjunction with common law privacy and must be considered on a case-by case basis. To withhold records regarding violence between family members under common law privacy, a governmental body must meet the *Industrial Foundation* test. We conclude that the witnesses' names and statements you have marked in case no. 1995-223 in regards to family violence/domestic disturbances may not be withheld under section 552.101 in conjunction with common law privacy. However, we have marked one small portion of the information in case no. 1995-223, and additional information in case no. 2000-60 that is private. TCSO must not release this information to the requestor.

You also assert that portions of the submitted information are excepted from disclosure under section 552.108(b) of the Government Code, which excepts internal records of a law enforcement agency that are maintained for internal use if release of the information would interfere with law enforcement. Gov't Code §552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Information about complaints against police officers generally may not be withheld under section 552.108.<sup>2</sup> The identities of witnesses, informants, and persons interviewed in the course of a police internal investigation may be withheld under section 552.108 if the police department demonstrates that disclosure either might subject these individuals to possible intimidation or harassment or might harm the prospects of future cooperation. Open Records Decision Nos. 329 at 2 (1982), 313 at 2-3 (1982), 297 at 2 (1981), 252 at 4 (1980). However, section 552.108 is inapplicable where a complaint against a law enforcement officer does not result in a criminal investigation or prosecution. *Morales v. Ellen*, 840 S.W.2d 519, 525-526 (Tex.App.-El Paso 1992, writ denied)(construing statutory predecessor).

The records that you have submitted relate to three pending investigations, one case which has been referred to Captain Pickering, two cases in which disciplinary action was taken, and other cases in which no action was taken because the complaint was determined to be unfounded. After reviewing your arguments and the submitted information, we conclude that TCSO may not withhold the names and statements you have marked under section 552.108

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<sup>2</sup> For example, the names of complainants, the names of the officers who are the subjects of the complaints, an officer's written response to a complaint, and the final disposition of the complaint generally are not excepted from disclosure by section 552.108. Open Records Decision Nos. 350 at 3 (1982), 342 at 2 (1982), 329 at 2 (1982).

of the Government Code. The names of complainants are public, and must be released. *See* Open Records Decision Nos. 562 at 10 ( 1990), 361 (1983 ), 350 (1982 ), and 208 (1978).

Section 552.117(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, and information that reveals whether a peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code. TCSO must withhold those portions of the records that reveal an officer's home addresses, home telephone numbers, and social security numbers.

Section 552.117(1) may also be applicable. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, TCSO may only withhold information under section 552.117(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, TCSO must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. TCSO may not withhold this information under section 552.117(1) for those employees who did not make a timely election to keep the information confidential.

A social security number or "related record" also may be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You do not inform us that the social security numbers in the submitted records were obtained and maintained pursuant to any provision of law enacted on or after October 1, 1990. We therefore have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by TCSO pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you state that the requested information contains driver's license numbers and other motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Texas driver's license numbers, vehicle identification numbers, license plate numbers, and personal identification numbers must be withheld under section 552.130.

In summary, the compiled criminal history information which we have marked must be withheld under section 552.101 and *Reporters Committee*. The CHRI which we have marked must be withheld pursuant to section 411.083(a). You must withhold the Texas driver's license numbers, vehicle identification numbers, license plate numbers, and personal identification numbers under section 552.130. The information which we have marked in case nos. 1995-223 and 2000-60 must be withheld pursuant to section 552.101 in conjunction with common law privacy. Information that is confidential under section 552.117 must be withheld. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by TCSO pursuant to any provision of law enacted on or after October 1, 1990. You must release all of the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CMN/seg

Ref.: ID# 148630

Enc.: Submitted documents

cc: Mr. Mike Mancias  
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(w/o enclosures)